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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 855

CONGRESS OF INDUSTRIAL ORGANIZATIONS, et als,

Petitioners,

v.

ROBERT E. McADORY, et als,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

BRIEF FOR RESPONDENTS

WILLIAM N. MCQUEEN,
Acting Attorney General,
Montgomery, Alabama.
JAMES A. SIMPSON,
Birmingham, Alabama,
JOHN W. LAPSLEY,
Birmingham, Alabama,
Attorneys for Respondents.

JOHN E. ADAMS, Grove Hill, Alabama,
EVANS DUNN, Birmingham, Alabama,
DAVID S. SATTERWHITE, Birmingham, Alabama,
Of Counsel.

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OPINION BELOW

The opinion of the court below (R. 220) is reported in 20 So. (2d) 40, and was rendered on December 7, 1944.

STATEMENT AS TO JURISDICTION

Jurisdiction is asserted by petitioners under the provisions of the Act of Congress of February 13,

1935, Section 237-b, 28 U.S.C.A., Section 344-b.

The power and jurisdiction of this court under Article 3, Section of the Constitution of the United States is hereinafter discussed.

STATEMENT OF THE CASE

This suit was instituted by petitioners, certain labor organizations and officers thereof, against the respondents, the Solicitor of Jefferson County, Alabama, and the Sheriff of Jefferson County, Alabama, under the Declaratory Judgment Statute of Alabama, (Title 7, Sections 156-168, Code of Alabama 1940) seeking to declare as unconstitutional the Bradford Act (General Acts of Alabama of 1943, page 253) and certain sections or provisions thereof.

The validity of Sections 7 and 16 are the only separate sections or provisions involved in this case.

The facts contained in petitioners "Statement of Facts" are substantially correct with the following exceptions:

1. Respondents deny that the Act by its terms or in effect imposes a license upon labor organizations or imposes any annual fee or tax, but only a nominal recording fee of $2.00, for recording the financial report for the preceding year.

2. It is not admitted that the members of labor organizations, individually, engage in the same activities as the labor organization.

3. The record shows that the policy and practice of C.I.O. labor organizations is to exclude employees who have the right to hire and discharge; and also to exclude professional employees too close to management or in positions involving policy making, or those employed in higher technical branches of an industry. (R. pages 124, 125, 126, 127).

See Article III of Constitution of International Union, United Steelworkers of America, C.I.O., pages 4-5, petitioners' Exhibit No. 1, where it is provided:

> "No person having the power, in the management of any mill or factory, to hire or fire shall be eligible for membership.
>
> "Persons having supervisory power, excluding the right to hire and fire, shall be eligible to membership subject to the approval of the Local Union and the International Executive Board."

See Section I of Agreement between Tennessee Coal, Iron and Railroad Company and United Steelworkers of America, petitioners' Exhibit No. 3, in which it is provided:

> "The term 'employee', as used in this Agreement, applies only to members of the Union, excluding salaried employees, foremen,

assistant foremen, supervisors in charge of any classes of labor, watchmen, guards, and confidential clerical employees, regardless of method of compensation, (but not excluding other clerical employees on an hourly wage-rate basis)."

See also definition of "employee" in Section I of Agreement between Tennessee Coal, Iron and Railroad Company and United Steelworkers of America, (Local Union No. 2210) petitioners' Exhibit No. 4.

See Article III of Constitution of International Union, United Steelworkers of America, C.I.O., adopted May 13th, 1944, petitioners' Exhibit No. 9.

4. Certain labor organizations followed the practice of organizing separate unions or organizations for professional or technical employees. (R. 125, 126, 127).

ARGUMENT

I

NO CASE OR CONTROVERSY IS HERE PRESENTED WITHIN THE POWER AND JURISDICTION OF THIS COURT UNDER ARTICLE III, SECTION 2 OF THE CONSTITUTION OF THE UNITED STATES.

The record in this case does not show all of the facts and circumstances with respect to the activities or functioning of each of the petitioners as labor

organizations, in the same manner as would be involved in a suit to enforce the civil penalty imposed under Section 18 of the Bradford Act against labor organizations for a violation of the provisions of the Act. While it may be assumed from the record that the acts of the local labor organizations are sufficient to show that they are functioning within the State of Alabama, it does not clearly appear that the C.I.O. and other National Labor Organizations are performing such acts within Alabama as would constitute functioning in this State within the meaning of the Bradford Act; and the court below has not specifically passed upon the legal effect of the acts of the various labor organizations included as petitioners in this cause.

For a further discussion of this point, reference is here made to Argument I in the brief for respondents in case No. 588, Alabama State Federation of Labor, et als, v. McAdory, et als, herewith submitted, which argument is here adopted.

II

SECTIONS 7 AND 16 OF THE BRADFORD ACT ARE REASONABLE REGULATIONS ADOPTED BY THE STATE IN THE EXERCISE OF ITS POLICE POWER, ARE NOT ARBITRARY, AND THEREFORE DO NOT CONFLICT WITH ANY PROVISION OF THE CONSTITUTION OF THE UNITED STATES.

For a full discussion of the validity of these two sections, reference is here made to brief by respondents filed in this court in case No. 588, Alabama State Federation of Labor, et als, v. McAdory, et als, the rationale of which brief is here adopted.

On the right of the State in the exercise of its police power to regulate labor organizations we cite the following additional authorities:

Hotel and Restaurant Employees International Aliance v. Wisconsin Employment Relations Board, 236 Wisc. 329, 295 N. W. 634, 315 U.S. 437, 62 S. Ct. 706, 86 L. Ed. 946.

Christoffel v. Wisconsin Employment Relations Board, 243 Wisc. 332, 10 N. W. (2d) 197. Certiorari denied by the Supreme Court of the U. S. October 25, 1943, 64 S. Ct. Rep. 90.

United States v. Southeastern Underwriters Association, 322 U.S. 533.

Cf. *Lochner v. New York*, 198 U.S. 45, 49 L. Ed. 937, 25 S. Ct. Rep. 539.

The occasion or necessity for State regulation of labor organizations may be partly attributed to the fact that no regulation of the activities and affairs of the labor organization itself is incorporated

in the National Labor Relations Act. For a discussion of the National Labor Relations Act with respect to this omission, and for a discussion of certain differences between the National Labor Relations Act and the Railway Labor Act, see dissenting opinion of Mr. Justice Jackson in *Wallace Corporation v. National Labor Relations Board*, 89 L. Ed., Pamphlet No. 4, pages 184, 189 to 196.

III

THE "FUNCTIONING" OF A LABOR ORGANIZATION IN ALABAMA IS A LOCAL ACTIVITY, SUBJECT TO STATE REGULATION IN THE EXERCISE OF THE POLICE POWER.

Petitioners in this case make the contention that the Bradford Act constitutes a regulation of interstate commerce, based upon the theory that activities of national or international labor unions are carried on in various states, and the labor conditions in one state affect labor conditions in another. They cite as authority for this contention the case of *International Text Book Company v. Pigg*, 217 U.S. 191 in which it was held that the State of Kansas had no power to require a corporation engaged solely in interstate commerce to file a statement with the Secretary of State as a condition to the exercise of its privilege to conduct such business. That case is clearly distinguishable from any facts involved in the case at bar, for the reason that there the activity was interstate commerce, not subject to state regula-

tion, whereas the functioning of a labor organization constitutes the exercise of a local privilege, irrespective of the fact that the members of the organization may be employed by an employer who is engaged in interstate commerce.

CONCLUSION

It is respectfully submitted that this cause should be dismissed as not presenting a case or controversy within the power or jurisdiction of the court necessitating a decision upon the constitutional validity of the Bradford Act or of Sections 7 or 16 thereof; or that the judgment of the court below should be affirmed.

Respectfully submitted,

WILLIAM N. MCQUEEN,
Acting Attorney General,
Montgomery, Alabama.

JAMES A. SIMPSON,
Birmingham, Alabama,

JOHN W. LAPSLEY,
Birmingham, Alabama,
Attorneys for Respondents.

JOHN E. ADAMS, Grove Hill, Alabama,
EVANS DUNN, Birmingham, Alabama,
DAVID S. SATTERWHITE, Birmingham, Alabama,
Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief and argument was mailed, postage prepaid to Hon. Crampton Harris, First National Building, Birmingham, Alabama, counsel for petitioners, on the 21st day of March, 1945.

William N. McQueen

WILLIAM N. McQUEEN,
ACTING ATTORNEY GENERAL,

OF COUNSEL.

SUPREME COURT OF THE UNITED STATES.

No. 855.—October Term, 1944.

Congress of Industrial Organizations, an Unincorporated Association, Philip Murray, Individually, etc., et al., Petitioners, *vs.* Robert E. McAdory, as Solicitor of Jefferson County, Alabama, et al.	On Writ of Certiorari to the Supreme Court of the State of Alabama.

[June 11, 1945.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This suit, brought in the state courts of Alabama for a declaratory judgment adjudicating the constitutional validity of the Bradford Act, No. 298 Alabama Laws of 1943, (Code 1943, Tit. 26, §§ 376, *et seq.*), and for an injunction, is a companion case to No. 588, *Alabama State Federation of Labor* v. *McAdory*, decided this day.

Petitioners are the Congress of Industrial Organizations, a national labor organization, and certain affiliated labor organizations, whose members are employed within the State, and certain of their officers. Petitioners brought the present suit in the State Circuit Court against respondents who are county officers charged with the duty of enforcing the Act, praying a declaratory judgment that the Act as a whole and particularly §§ 7 and 16, among others, are unconstitutional under the Federal and State Constitutions, and are invalid because in conflict with the National Labor Relations Act, and praying that an injunction issue.

After a trial upon evidence the Circuit Court adjudged certain sections of the Act, not here in issue, to be invalid in whole or in part. In other respects it held the Act constitutional and valid. It found that the evidence disclosed no effort on the part of respondents to enforce the provisions of the Act declared to be invalid and accordingly denied an injunction. On appeal the Supreme Court of Alabama affirmed, — Ala. —, for the reasons

stated in its opinion in the *Alabama State Federation of Labor* case.

We granted certiorari, — U. S. —, on a petition which urged that §§ 7 and 16 of the Act deprive petitioners of their civil rights in violation of the constitutional guarantees of free speech and assembly; that §§ 7 and 16 conflict with the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. § 151 *et seq.*; and that § 7 denies petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment on the ground that its provisions have not been extended to employers' associations, and that the Act excludes from its operation labor organizations which are subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.*

The record shows that the respondents have agreed not to enforce § 7 of the Act until the final decision as to the section's validity by this Court in *Alabama State Federation of Labor* v. *McAdory*, No. 588, *supra*. Since we have held in that case that it is inappropriate to pass upon the constitutional validity of § 7 on the record presented, we cannot say that the present proceeding is adversary as to § 7. The Court will not pass upon the constitutionality of legislation in a suit which is not adversary. *Bartemeyer* v. *Iowa*, 18 Wall. 129, 134-5; *Chicago & Grand Trunk R. Co.* v. *Wellman*, 143 U. S. 339; *Atherton Mills* v. *Johnston*, 259 U. S. 13, 15; *Coffman* v. *Breeze Corps.*, 323 U. S. 316, 324, or in which there is no actual antagonistic assertion of rights. *Cleveland* v. *Chamberlain*, 1 Black 419; *Swift & Co.* v. *Hocking Valley Ry. Co.*, 243 U. S. 281, 289; *Norton* v. *Vesta Coal Co.*, 291 U. S. 641; *United States* v. *Johnson*, 319 U. S. 302.

Upon an examination of the record in this case we find that it shows that petitioners or some of them have members who are employed in the State of Alabama in industries whose employees are subject to the National Labor Relations Act, and that they act in the State and are certified as bargaining representatives of such employees under the Act. But the extent to which they act in the State as bargaining representatives of employees in industries which are not subject to the National Labor Relations Act does not appear, and consequently the record affords no adequate basis for an adjudication of the extent to which for that reason the petitioners or some of them may be rightly subject to local regulation even though they also represent employees in other industries which are subject to the National Act.

The record does not show whether or not petitioners provide insurance benefits for their members. The State Supreme Court has construed §16 as inapplicable whenever it would otherwise "interfere with or void any insurance contract now in existence and in force" and, as construed, has held it valid as applied to petitioners. On this state of the record we are unable to say to what extent § 16 can be deemed applicable to members of any of petitioners because of existing insurance arrangements. For this and the other reasons stated in our opinion in the *Alabama State Federation of Labor* case the record does not present a case calling for decision of the constitutional validity of § 16 as applied to any existing union members.

Petitioners nevertheless assert that they intend to admit such supervisory employees as members in the future, and that the Supreme Court of Alabama in the *Alabama State Federation of Labor* case has held that such future "executive, administrative, professional, or supervisory" employees are not excepted from the provisions of § 16 by reason of their acquisition as such employees of insurance benefits. Although there is evidence in the record indicating that some of petitioners who have non-supervisory members admit to membership employees whom they designate as "supervisory" in the words of the statute, and will continue to do so, there is also evidence that they do not admit supervisory employees who have the right to "hire and fire." The Supreme Court of Alabama did not in its opinion in this case or in the *Alabama State Federation of Labor* case define the statutory language "executive, administrative, professional, or supervisory employee." Thus on the basis of the record before us we do not know whether those employees which petitioners intend to admit to membership are such as are included in § 16. We do not know that § 16 will not be interpreted to embrace only those employees which have the authority to employ and discharge employees. And so it does not appear that the statute will be applied so as to raise the federal question which we are asked to decide.

Further the contention that § 16 conflicts with the National Labor Relations Act, cf. *Hill* v. *Florida*, No. 811, decided this day, was not passed on by the Circuit Court, was not raised by assignment of error in the Alabama Supreme Court, and that court did not pass on that question either in its opinion in this case or in its

opinion in the *Alabama State Federation of Labor* case which it adopted as controlling. The Alabama Supreme Court will not consider errors which have not been assigned, *Rowland* v. *Plummer*, 50 Ala. 182, 197; *Pettibone-Taylor Co.* v. *Farmers Bank*, 156 Ala. 666; *Maloney* v. *Ladura Mines Co.*, 191 Ala. 655; *Nichols* v. *Hardegree*, 202 Ala. 132; *Halle* v. *Brooks*, 209 Ala. 486, or which have not been specifically and precisely raised in the assignments of error, *Kinnon* v. *Louisville, etc. R. Co.*, 187 Ala. 480; *Carney* v. *Kiser Co.*, 200 Ala. 527; *Hall* v. *Pearce*, 209 Ala. 397, 399; *Jackson Lumber Co.* v. *Butler*, 13 So. 2d 294, 298. Since the State Supreme Court did not pass on the question now urged, and since it does not appear to have been properly presented to that court for decision, we are without jurisdiction to consider it in the first instance here. *Caperton* v. *Bowyer*, 14 Wall. 216, 236; *Halbert* v. *City of Chicago*, 202 U. S. 275, 280, 281; *Dorrance* v. *Pennsylvania*, 287 U. S. 660; *Chandler* v. *Manifold*, 290 U. S. 665; see also *Flournoy* v. *Wiener*, 321 U. S. 253; *Charleston Fed. Sav. & Loan Assoc.* v. *Alderson*, No. 400, this term, slip opinion, page 2 and cases cited.

We find no other factual differences calling for comment between the case presented by the record here and that presented in the *Alabama State Federation of Labor* case. Our decision here is therefore controlled by our decision in that case. The question raised as to the equal protection of the laws is too unsubstantial to merit review. The other issues, as presented by the record now before us, are, for reasons stated at length in our opinion in the *Alabama State Federation of Labor* case, inappropriate for decision in a declaratory judgment proceeding. The writ of certiorari is accordingly

Dismissed.